IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

OP.No. 3443 of 1998(I)

PETITIONER:

K.K.BABURAJAN,
KANNANKUNNUMMAL HOUSE,
P.O.THAMARASSERY,
KOZHIKODE DISTRICT.

BY ADV. SMT.VIDHYA. A.C

RESPONDENTS:
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1. **DEPUTY GENERAL MANAGER,**
   STATE BANK OF INDIA,
   ZONAL OFFICE, SHANMUGHAM ROAD,
   ERNAKULAM.

2. **BRANCH MANAGER,**
   STATE BANK OF INDIA,
   KEINATTY BRANCH, KEINATTY P.O.,
   KOZHIKODE DISTRICT.

BY ADV. SRI.P.GOPAL

THIS ORIGINAL PETITION HAVING COME UP FOR ADMISSION ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.3443 of 1998 (I)

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Dated this the 22nd day of June, 2007

J U D G M E N T

This original petition was filed on 19/02/1998, complaining, about the alleged illegal termination of the petitioner from the employment of the State Bank of India, without complying with Chapter VA of the Industrial Disputes Act, 1947, hereinafter the "Act", in particular, that the impugned action amounts to retrenchment without following the procedure prescribed under Section 25F.

2. The petitioner has pleaded in paragraph '5' and ground 'D' of the original petition that he is a poor scheduled caste candidate and does not have the capacity to engage the respondents in a lengthy legal battle.

3. Going by the averments in the counter affidavit and the materials placed therewith, there were different persons

working in the service of the bank on temporary basis, who had completed 240 days or more of such service and the bank, on the basis of settlement with the trade unions, made a list of such employees and proceeded to give them employment on permanent basis. The said list was valid up to 31/03/1997 for filling up the vacancies till 31/03/1994. According to the bank, the petitioner, going by his seniority in the list, could not obtain a placement in terms of that settlement and it was, therefore, that the petitioner was not absorbed.

4. The fact that he had been included in the list, by itself, shows that the petitioner had satisfied the terms for the protective cover of Section 25F of the Act, in as much as he had put in continuous service of more than 240 days. The rights of a workmen under Chapter VA of the Act cannot be taken away or diluted on the basis of settlements between the management and the trade unions. Therefore, the petitioner was statutorily entitled to the protection of Section 25F of the Act. Hence, the petitioner is entitled to reinstatement.

5. The learned counsel for the bank argued that on the basis of the decisions of the Apex Court, a temporary employee is not entitled to protection of Section 25F of the Act, except in proof of continuous service for the statutory period, which he has to establish before the Industrial Courts. But, the fact remains that in the case in hand, the casting of such a burden of proof on the petitioner is unnecessary because it is the admitted situation that he had worked for more than 240 days, which was the basis of his being included in the list prepared by the bank, in terms of the settlement. Therefore, the requirement of the petitioner has established his continuous employment for 240 days and that is beyond dispute. It can be decided on the basis of admission.

6. But in deciding whether the petitioner is entitled to any backwages, certain issues will have to be decided. Firstly, the petitioner has to plead and prove that while he was out of employment of the respondents, he did not have any other employment or avocation, still further, if he had any avocation, his earnings on account of that. As already noticed, the only plea in the original petition is that the petitioner is a poor Scheduled

Caste candidate. He was disengaged in 1996. Even if the original petition is filed on 19/02/1998, there is no specific pleading that he is not otherwise employed. There is also no material by way of affidavit or otherwise placed during the pendency of these proceedings before the Court to conclude that during the pendency of this original petition before this Court, for more than nine years by now, the petitioner had not been employed. I may immediately remind myself that even in cases where Awards are passed by Industrial Courts and the implementation of such awards get stayed by the superior authorities, including by this Court, it is the statutory requirement of Section 17B of the Act that the workmen has to establish absence of alternate employment and income to sustain the claim for continued payment of wages. Having regard to the scheme of the labour laws governing the field, I find no ground to order any backwages for the petitioner, particularly, when inspite of the objection raised in that regard by the bank, the petitioner is not being relegated to the Industrial Courts, on account of the fact that this original petition had been pending before this Court for the last nine years.

7. On the very peculiar facts and circumstances of this case, the exercise of jurisdiction by this Court is called for rather than relegating the petitioner to the Industrial Court. The entertainment of this original petition, in the realm of practice and procedure of writ courts, inspite of availability of alternate remedy, is not to create a precedent, but only to do complete justice between the parties, who had been before this Court for the last nine years.

In the result, the respondents are directed to reinstate the petitioner forthwith, without backwages, within a period of one week from the date of receipt of a copy of this judgment. No costs.

THOTTATHIL B.RADHAKRISHNAN
Judge

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No. 3443 of 1998 (I)

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J U D G M E N T

22nd June, 2007